

## **Corps and EPA Clarify Definition of Fill**

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers today announced that they are taking action to better coordinate federal programs affecting protection of wetlands and streams. Completing a regulation proposed by the Clinton Administration in 2000, the Army Corps of Engineers is adopting EPA's approach to the Clean Water Act's definition of "fill material," which has been in place since 1977. The regulation will not only remove ambiguity from Clean Water Act's regulations, but also enhance environmental protection of our wetlands and streams by prohibiting the dumping of trash or garbage in them.

In addition, the agencies will apply new conditions to permits issued to regulate the placement of dirt and rock from mountaintop mining in streams. The Department of Interior is also developing regulations intended to improve environmental protection by reducing the volume of mining discharges in streams. EPA and the Corps, working with the Department of Interior's Office of Surface Mining and Fish and Wildlife Service and the State of West Virginia, are preparing an Environmental Impact Statement evaluating the impacts of mountaintop removal mining in Appalachia and developing recommendations for further improvements in the agencies programs regulating this practice.

"We are committed to working with the affected States to reduce mining-related environmental impacts, while providing the nation with the advantages of cleaner burning coal," EPA Administrator Christie Whitman said.

"Mountaintop mining is a long-established practice in Appalachia, and this Administration is committed to working with the affected states to strengthen the environmental safeguards governing this practice. We are working to establish a regulatory environment that is clear, predictable, fair and fosters good environmental stewardship, " said Undersecretary of the Army Les Brownlee.

The Corps and EPA will publish in the Federal Register a rule to harmonize differences between existing EPA and Army Corps of Engineers regulations by adopting EPA's effects-based approach to the definition of the term "fill material." The final rule is substantially identical to the rule proposed in 2000, but includes additional environmental protections. For example, under the new rules, garbage or trash will not be permitted in the nation's waters.

As a result of improvements already implemented in West Virginia by the agencies and the State in 1998, there have been 30 percent fewer valley fills and a reduction in the overall stream impact of almost 25 percent from these fills. These improvements are now being applied elsewhere in Appalachia and we anticipate similar reductions in mining related impacts.

The Administration is also undertaking several related actions to further bolster protection of Appalachian watersheds impacted by mining.

The Corps is taking steps now to put tougher new restrictions on mining activities that can be permitted by establishing limits on the size of valley fills that can be built in Appalachian streams. The Corps is also requiring more effective mitigation to compensate for environmental impacts. The Office of Surface Mining will be proposing changes to its regulations intended to ensure that mining discharges in streams are reduced in both size and number. OSM's changes will also require that better information is provided by permit applicants regarding their projects so that adverse environmental impacts can be more effectively addressed.

EPA, the Corps, Office of Surface Mining, the U.S. Fish and Wildlife Service and the State of West Virginia are currently preparing a joint Environmental Impact Statement that evaluates the environmental impacts of mountaintop coal mining and provides recommendations for improving Federal regulatory programs responsible for the review of proposed mining operations. The draft Statement will be released later this summer for public review and comment.

The Office of Surface Mining is responsible for developing the rules that govern mountaintop removal coal mining under the Surface Mining Control and Reclamation Act. Most Appalachian states administer these rules through programs delegated to them by OSM.

EPA is responsible for the development and approval of the standards, criteria, and effluent guidelines that govern impacts to the Nation's waters under the Clean Water Act. EPA approves state water quality standards in accordance with the Act, which are achieved primarily through programs administered by the states. EPA also fosters the development of state wetlands programs, as well as provides environmental standards and oversight for the administration of the wetlands permit program under section 404 of the Act.

The Corps regulates the discharge of rock and dirt into wetlands and streams from mining operations under the section 404 permit program of the Clean Water Act. Discharges under the permit program may only be authorized in compliance with environmental standards that include mitigation for unavoidable impacts to the aquatic environment.